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No. 84-291

In The

Supreme Court of the United States

October Term, 1984

EVERARD C. CALL and BETH S. CALL,

Petitioners,

vs.

CALIFORNIA TAHOE REGIONAL PLANNING AGENCY,

Respondent.

On Petition for Writ of Certiorari to the Court of Appeal of the State of California Third Appellate District

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Where a state court applying state law decides that a complaint purporting to raise federal questions is barred by the doctrine of res judicata, does this Court have jurisdiction to review such a state law decision on a writ of certiorari?

2. Does petitioners' conclusory allegation that the challenged land use ordinance has taken their property without just compensation present a substantial federal question in light of this Court's decision in *Agins v. City of Tiburon,* when the ordinance on its face permits development and petitioners have made no application for any use whatever?

3. Does petitioners' allegation that the challenged subdivision restriction impairs alleged obligations of municipal bonds present a substantial Contract Clause issue, when, a) respondent was not a party to the bond obligation, b) the ordinance, an exercise of the police power, by its terms regulates only subdivision of land, c) both state and federal courts construing the same and similar bond agreements have found no contract impairment?

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On Petition for Writ of Certiorari to the Court of Appeal of the State of California Third Appellate District

RESPONDENT'S BRIEF IN OPPOSITION

OPINIONS BELOW

The opinions of the Court of Appeal of the State of California, Third Appellate District, and the Superior Court of the State of California in and for the County of Placer are unreported. The opinions are reproduced in Appendix A of the Petition for Writ of Certiorari.

JURISDICTION

Petitioners seek to invoke this Court's jurisdiction under 28 United States Code section 1257 subdivision (3). For the reasons set forth *infra,* this Court lacks jurisdiction to consider the questions raised in the petition.

CONSTITUTIONAL PROVISIONS, STATUTES AND ORDINANCE INVOLVED

1. For purposes of the jurisdictional question, consideration of 28 United States Code section 1257 subdivision (3) is required:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> ". . . . . .
>
> "(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specifically set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

2. Respondent will make reference to the Contract Clause (Article I, Section 10), and the Fifth and Four-

teenth Amendments to the United States Constitution, quoted at page four of the petition for writ of certiorari, only to show that no substantial question involving these constitutional provisions is present in this case.

3. As applied in the proceedings below, the doctrine of res judicata is embodied in California Code of Civil Procedure, section 1908, subdivision (a) (2): "[T]he judgment or order is, in respect to the matter directly adjudged, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing under the same title and in the same capacity, provided they have notice, actual or constructive, of the pendency of the action or proceeding."

4a. Section 5.13 of respondent's Land Use Ordinance, which is an interim restriction on subdivision of land, and which petitioners claim is unconstitutional, is set forth in Appendix B to the Petition for Writ of Certiorari.

b. In addition, respondent will make reference to the land use classifications found in sections 7.11, 7.15-7.25 of its Land Use Ordinance, the text of which is set forth in the Appendix hereto.

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STATEMENT OF THE CASE

A. Creation and Nature of Respondent CTRPA

Respondent California Tahoe Regional Planning Agency ("CTRPA"), throughout the course of this liti-

gation in the state courts, was a political subdivision of the State of California.[1]

It was created by the California Legislature as a regional land use planning agency to address the difficult land use and ecological problems existing in the California portion of the Lake Tahoe basin. (See generally, *People, ex rel. Younger v. County of El Dorado* (1971) 5 Cal.3d 480, 485-490, 96 Cal.Rptr. 553, 554-558, 487 P.2d 1193, 1194-1198; *Raley v. California Tahoe Regional Planning Agency* (1977) 68 Cal.App.3d 965, 971-972, 137 Cal.Rptr. 699, 702-703.)

Pursuant to its enabling legislation (Cal.Gov. Code section 67000, et seq.), CTRPA adopted a general plan and land use ordinance in 1975, and from then until its deactivation, CTRPA exercised regulatory permitting authority over land development projects within its jurisdiction.

Section 5.13 of CTRPA's ordinance (Pet.App. B), the subject of both petitioner's constitutional challenge as

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1. CTRPA ceased to exist on April 26, 1984, by operation of law, pursuant to the terms of California Government Code section 67131 (West 1983), upon the adoption by the bi-state Tahoe Regional Planning Agency of ordinances implementing the revised Lake Tahoe Regional Plan, in accordance with the Tahoe Regional Planning Compact. (Pub. L. No. 96-551, 94 Stat. 3233 (1980); Cal. Gov. Code section 66801, et seq. (West supp. 1984). Pursuant to California Government Code section 67132, the Secretary of the California Resources Agency is the legal successor to CTRPA for the sole purpose of winding up the affairs of the agency. The Secretary's powers include the ability to carry on with the agency's pending litigation to the same extent and in the same manner as the agency. (Cal. Gov. Code section 67132 subdivision (b) (3) (West 1983).) Although respondent refers to CTRPA's ordinance in the present tense, enforcement of the ordinance ceased on the date of the agency's deactivation. (Cal. Gov. Code sec. 67131, *supra*.)

well as that of their predecessors in title in the prior action, *Call v. Feher* (1979) 93 Cal.App.3d 434 [155 Cal.Rptr. 387], temporarily prohibits new subdivision of land until 85 per cent of existing parcels are built upon. "The need for this interim constraint on the creation of additional lots is explained in the [CTRPA] regional plan as being due to the dramatic and excessive creation of new lots during the years 1950-1971 and the resulting potential for massive population growth harmful to the environmental quality of the [Lake Tahoe] basin." *(Call v. Feher, supra,* 93 Cal.App.3d at p. 442, 155 Cal.Rptr. at p. 390.)

Contrary to petitioners' statements that they are prohibited from any residential use of their land, their complaint in the state trial court admits the land is zoned residential by CTRPA as well as by Placer County.[2] Sec-

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2. Petitioners' Complaint, p. 8, paragraphs 28 and 29:

"28. From on or about September 19, 1975, to date, significant land-use planning and policy determinations were made by Defendants relative to the Tahoe area, in general, and the subject property, in particular. Said governmental determinations specified and mandated that the area would be used for single-family residences.

"29. No dwelling units, residences, or other structures have ever been constructed upon Plaintiffs' subject property although, at the present time, Plaintiffs wish and intend to have the subject property developed for residential use, as generally specified in the Land Use Plan described above, as allowed under zoning of the Defendant COUNTY and as contemplated and agreed between the Defendant COUNTY and Plaintiffs at the time of the sale of the said bonds. The use of Plaintiffs' property for residential purposes is the highest and best use of that property, and entirely consistent with the understandings of the parties. The facilities constructed by the Assessment District were *sized* and *engineered* for the purpose of providing those improvements to subdivided lots in the subject property."

tions 7.11 and 7.15-7.25 of CTRPA's ordinance (Resp. App.), establishing land use districts, demonstrate that residential use, if not new subdivisions, is permitted in all residential zoning categories.

B. The Relationship of Call v. Feher to the Present Case.

Call v. Feher (1979) 93 Cal.App.3d 434, 155 Cal.Rptr. 387, is the "prior action" which forms the basis for the state courts' application of res judicata as a bar in the present case.

Call v. Feher involved the same parcel of land and the same CTRPA ordinance challenged in the present case, and both CTRPA and petitioners in this case were parties. The case was an action under California municipal bond law by the Calls to foreclose on a municipal improvement bond purchased from Placer County and secured by the parcel upon which the bond financed improvements were constructed. Defendant bond obligors and landowners, the Calls predecessors in title, defended the foreclosure action and cross-complained against the Calls and CTRPA, asserting the CTRPA subdivision restriction unconstitutionally destroyed the value of the bond financed improvements without compensation, deprived them of a vested right to subdivide, unconstitutionally impaired the contractual obligation of the assessment bonds, and resulted in commercial frustration of the bond agreement, thereby excusing their default in paying bond assessments.

The trial court entered judgment in favor of the Calls and CTRPA, and the state court of appeal affirmed, rejecting the previous landowners' arguments regarding the

CTRPA subdivision restriction. *(Call v. Feher, supra,* 93 Cal.App.3d 434, 443-446, 155 Cal.Rptr. 387, 391-393.)

In their successful bond foreclosure action, the Calls actively supported the validity of the CTRPA ordinance as applied to the previous landowners, arguing *inter alia* that the CTRPA ordinance did not interfere with the bond obligation or otherwise injure the landowners because the property was zoned residential and could be used for that purpose, and because the landowners had received the value and the benefit of the bond assessments despite the CTRPA ordinance.

C. The Present Case

After the successful termination of their bond foreclosure action, petitioners purchased the property at the judicially ordered sale. Soon thereafter, petitioners filed the present action against CTRPA. This time, petitioners sought to change their position with respect to the validity of CTRPA's ordinance. The focus of their attack was the same issue as previously litigated, i.e., the effect of the subdivision restriction on the bond obligation, except now they were asserting the position they previously attacked.

In essence, the complaint in the present action alleges petitioners' real property has been taken without compensation in violation of the Fifth and Fourteenth Amendments as a result of the subdivision restriction, and that said restriction, in violation of the Contract Clause, impairs the obligation of an alleged implied contract permitting subdivision between petitioners and Placer County arising from their purchase of the improvement bond issued by the County.

Although petitioners' complaint makes allegations to the effect that the property can only be used if subdivided, the complaint does not, and cannot allege that CTRPA ever imposed such a requirement. Nor does the complaint allege, nor could it, that petitioners ever applied to CTRPA for permission for a specific residential development. They in fact have not. The complaint itself admits the property is zoned for residential use. As sections 7.11, 7.15-7.25 of CTRPA's ordinance demonstrate, some residential development is permitted in all residential classifications. (Resp. App.)

The trial court sustained CTRPA's demurrer without leave to amend on grounds of res judicata and entered judgment dismissing the action, and the state appellate court affirmed. The Court of Appeal compared the landowners' claims against the CTRPA ordinance in *Call v. Feher* with the allegations in petitioners' complaint, and found them to be substantively identical and based on the same asserted right as landowners to be free of the subdivision restriction. (Pet.App. A-8, 9, A-14, 15.) Applying California's statutory definition of res judicata (Cal. Code of Civil Procedure section 1908 subdivision (a) (2) (West 1983)), as well as California case law delineating the doctrine (See, e.g., *Bernhard v. Bank of America* (1942) 19 Cal.2d 807, 122 P.2d 892), the Court of Appeal rejected as "inconsistent" and "nonsensical at best" petitioners' arguments that they were suing as bondholders, not landowners, and therefore were not adverse parties in the prior action and could not be considered in privity with the previous landowners. (Pet.App. A-9 through A-12.) The court reiterated its ruling in *Call v. Feher, supra,* 93

Cal.App.3d at p. 434, 155 Cal.Rptr. at 391, that the CTRPA ordinance affects only the property, and not any legal obligation or right under the bond agreement. The court referred not only to its own prior decision, but also to a parallel federal case involving identical Contract Clause assertions and a similar subdivision prohibition brought by Nevada municipal improvement bondholders against the bi-state Tahoe Regional Planning Agency. (*Northwestern Nat. Life Ins. Co. v. Tahoe Regional Planning Agency* (9th Cir. 1980) 632 F.2d 104, *affirming Northwestern Nat. Life Ins. Co. v. Jordan* (D.Nev. 1978) 447 F.Supp. 856.) (Pet.App. A-13, 14.)[3]

Finally, the appellate court below ruled that neither fairness nor equity prevented application of res judicata, not only as to issues actually litigated in the prior action, but as to any claims the Calls were making that might have been litigated in the prior action. The court observed that not only could petitioners have anticipated the prior judgment, as parties they acquiesced in that part of the judgment upholding the validity of CTRPA's subdivision restriction against their predecessors in title. (Pet. App. A-1, 2; A-13; A-15, 16.)

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3. Conversely, the Ninth Circuit Court of Appeals opinion in *Northwestern* cites *Call v. Feher* in recognizing that the bond agreement at issue therein contained no promise that the assessed lands would be free from restrictive zoning, and therefore no contract impairment resulted from the land use restriction. *(Northwestern Nat. Life Ins. Co. v. Tahoe Regional Planning Agency, supra,* 632 F.2d at p. 106.)

REASONS WHY THE WRIT SHOULD BE DENIED

I.

The State Court Decision Below, Based Entirely On California's Res Judicata Doctrine, Presents No Federal Question And Rests On Adequate State Grounds.

The decision below holds that, as a matter of state law, petitioners' complaint against CTRPA is barred on the grounds of res judicata. The decision is based entirely upon the state courts' application of the doctrine of res judicata, as embodied by state statute (Cal. Code of Civ. Proc. sec. 1908(a)(2) (West 1983)), and as delineated by California's reported case law. The immediate question is whether such a decision gives rise to federal issues over which this Court has jurisdiction. This Court lacks jurisdiction to review state court judgments based on adequate non-federal grounds. (*Murdock v. Memphis* (1875) 87 U.S. (20 Wall.) 590.) Since the decision here is based exclusively on adequate non-federal grounds, this Court lacks jurisdiction to review it even though federal questions were alleged in petitioners' complaint. (*McCoy v. Shaw* (1928) 277 U.S. 302, 303).

The exact jurisdictional issue presented herein was decided over a century ago by this Court on a set of facts demonstratively similar to those in this case. In *Chouteau v. Gibson* (1884) 111 U.S. 200, Chouteau and Maffit filed suit in a Missouri state court against Gibson to obtain a conveyance of certain lands. As one of his defenses, Gibson pleaded a prior judgment in his favor against Chouteau and Maffit to recover possession of the same lands, alleging that the identical matters were adjudicated by the prior

action. The Missouri Supreme Court entered judgment in favor of Gibson on the ground of res judicata alone, without considering the merits of the other issues in the case. This Court in granting a motion to dismiss for want of jurisdiction, held:

> "Such being the case, it is clear we have no jurisdiction. The legal effect of the judgment set up in bar is a question of general law as to which the decision of the State court is not reviewable here. The federal questions, if any there were in the case, lay behind this defence, and could not be reached until it was out of the way. The question presented by the defence was not whether a federal right had been properly denied by a former judgment, but whether the right had been once judicially determined so as to become *res judicata* between the parties. Whether an equitable title could be set up in bar of the action at law brought by Gibson, the holder of the legal title, to recover possession, is a question of State law upon which the judgment of the State court is conclusive. The same is true of the question whether the pleadings in the former action were such as to present the equitable defence in proper form for final adjudication. The court below has decided that the pleadings were sufficient; that the equitable defence could be made, and that the judgment in that action in favor of Gibson was, in its legal effect, a judgment that Chouteau and Maffit had no title to the land in controversy. Consequently that judgment was a bar to this action, and precluded the court below as well as this court from reopening the original litigation and considering again the questions that were put at rest

between the parties by the decision in their former suit. It is apparent, therefore, that no federal question which there may have been in the case was decided by the State court, and that the decision of such a question was not necessary to the final decree rendered. Without determining whether if the former judgment had not been a bar to the action, there were questions in the case that might have given us jurisdiction, we grant the motion to dismiss." (111 U.S. at 201.)

Chouteau v. Gibson presents in a nutshell the law applicable to this case. The legal effect of the judgment in *Call v. Feher* as res judicata of the issues in this case is a question of state law which is not reviewable in this Court. The federal questions alleged in petitioners' complaint lay behind CTRPA's defense of res judicata, and could not be reached unless it was out of the way. The issue below was not whether these asserted federal questions had been properly denied by the prior action, but whether the federal issues had been judicially determined so as to become res judicata between the parties. The prior decision in *Call v. Feher* found the CTRPA subdivision restriction constitutionally valid as applied to the property in question and the bond agreement in question. Consequently, the state courts in the present action correctly refused to relitigate the same issues involving the same parties and the same land.[4] Adjudication of the

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4. Petitioners' argument that application of res judicata to them is a denial of due process is without merit. Petitioners, being parties and in privity with other parties in the prior acton, either litigated or had the opportunity to litigate all of the

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merits of petitioners purported federal constitutional claims was not necessary to support a finding that res judicata bars petitioners' entire complaint. (*Chouteau v. Gibson, supra,* 111 U.S. at p. 201.)

The state court of appeal made its decision applying state statutory law and settled California case law on the subject of res judicata.[5] The decision rests on a fair and substantial state law basis. As was the case in *Chouteau v. Gibson, supra,* the jurisdictional prerequisite for review by this Court, a substantial federal question actually decided by the state court, is absent in this case. (*McCoy v. Shaw,* 227 U.S. at p. 302.)

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claims they assert in the present case. Their situation is distinguishable from those whose interests were not represented in the prior litigation. (See *Postal Telegraph Cable Co. v. City of Newport, Kentucky* (1918) 247 U.S. 464, 476; *Blonder-Tongue Laboratories, Inc. v. University Foundation* (1971) 402 U.S. 313, 317-330.)

5. Petitioners implicitly admit the soundness of the decision below by totally ignoring the California authorities upon which it is based. Rather, they base their contention that res judicata is inapplicable to their state court action by citing a plethora of federal cases construing the doctrine of res judicata as applied in the federal courts. (Pet. Cert. pp. 43-51.) Without discussing the considerable Erie doctrine problems petitioners' approach presents, there is nothing in the federal law of res judicata as discussed in the cases cited by petitioners which would preclude application of the doctrine under the present set of facts if this case and the prior case had been litigated in the federal court system. In fact, federal res judicata law follows the criteria set forth in the landmark California Supreme Court decision written by Justice Traynor in *Bernhard v. Bank of America* (1942) 19 Cal2d 807, 122 P.2d 892, and relied on by the court below in barring petitioners' present suit. (Pet.App. A-11, A-20.) (See *Blonder-Tongue Laboratories, Inc. v. University Foundation, supra, fn.3,* 402 U.S. at pp. 323-330.)

II.

Petitioners' Complaint Raises No Substantial Questions Under The Just Compensation Clause Or The Contract Clause.

A. CTRPA's Ordinance On Its Face Does Not Deprive Petitioners Of Their Property Without Just Compensation.

Petitioners' allegations that the CTRPA ordinance effects a taking without just compensation are completely foreclosed by this Court's decision in *Agins v. City of Tiburon* (1980) 447 U.S. 255. The complaint admits petitioners' land is zoned residential. The taking allegations are not only inconsistent with this admission, but also with the express terms of section 7.15-7.25 of the ordinance, which demonstrate that residential development is allowed under any of the various residential classifications. (Resp. App.) Under California practice, uncontroverted allegations in a complaint inconsistent with the express terms of a governmental ordinance may be rejected. (See *Agins v. City of Tiburon, supra,* 447 U.S. 255, 259 fn. 6.)

Since CTRPA's ordinance by its terms would allow petitioners to construct at least one residence, and since petitioners never applied to CTRPA for such development as the ordinance would permit, there is no controversy here regarding the ordinance as applied. (*Agins v. City of Tiburon, supra,* at p. 260.)

CTRPA's temporary subdivision restriction substantially advances legitimate governmental goals of controlling urbanization harmful to the environmental quality of the Lake Tahoe basin. The protection of the Tahoe area is one of California's highest priorities. (See *Call v. Feher, supra,* 93 Cal.App.3d at p. 422, 155 Cal.Rptr at

p. 390); *People ex rel. Younger v. County of El Dorado, supra,* 5 Cal.3d 480, 96 Cal.Rptr. 553, 487 P.2d 1193; Cal. Gov. Code secs. 67000-67002 (West 1983); Cal. Gov. Code sec. 66801 (West supp. 1984).) The ordinance is therefore a legitimate exercise of the state's police power. (*Agins v. City of Tiburon, supra,* at p. 261; *Penn Central Transp. Co. v. New York City* (1978) 438 U.S. 104, 129.)

Although CTRPA's ordinance limits development by posing an interim restriction on subdivision, it does not prohibit the best use of petitioners' land, which they admit is residential. Nothing in the express terms of the ordinance prevents petitioners from prohibiting public use of the property; no "fundamental attribute of ownership" has been extinguished. (See *Kaiser Aetna v. United States* (1979) 444 U.S. 164, 179-180.)

Having purchased the property long after the effective date of the subdivision restriction, petitioners cannot be said to have had any "reasonable investment-backed expectation" to subdivide the property. They were free to pursue their reasonable investment expectations by submitting a development plan to CTRPA. Under these circumstances, it cannot be said that the ordinance denied petitioners the "justice and fairness" guaranteed by the Fifth and Fourteenth Amendments. (*Agins v. City of Tiburon, supra,* at p. 263; see *Penn Central Transp. Co. v. New York City* 438 U.S. at p. 124.)

In light of this Court's *Agins* decision, there is no real controversy or substantial federal question concerning petitioners' just compensation allegations for this Court to review. (See *Zacht v. King* (1922) 260 U.S. 174, 176.)

B. The CTRPA Subdivision Restriction, A Valid Exexercise Of The State's Police Power, Does Not Impair The Obligation Of Petitioners' Bond.

Aside from its res judicata effect on the present case, *Call v. Feher, supra,* 93 Cal.App.3d 434, 155 Cal.Reptr. 387, together with *Northwestern Nat. Life Ins. Co. v. Tahoe Regional Planning Agency, supra,* 632 F.2d 104, dispose of petitioners' argument that the CTRPA subdivision restriction impairs their alleged contractual interests.[6]

The subdivision restriction affected only the property, not any legal right or obligation under petitioners' bond. Such an effect on the underlying subject matter of a contract does not contravene the Contract Clause. (*Northwestern Nat. Life Ins. Co. v. Tahoe Regional Planning Agency, supra,* 632 F.2d at p. 106.) Nothing CTRPA did prevented the bond obligors from making payments of principal and interest, the bond purchasers from receiving them, or the County from constructing the bond-financed improvements. *(Call v. Feher, supra,* 93 Cal.App.3d at p. 444, 155 Cal.Rptr. at p. 391.)

The claims set forth by petitioners refer to the effects of the ordinance on the ability to subdivide the property. (Pet.App. A-4.) Only the fee owner of the land is capable of subdividing it. Even petitioners admit that they never had the right or ability to subdivide the land in their status as bondholders. (Pet.App. A-11.) Neither the statute authorizing the issuance of petitioners' bond (Cal. Streets) and Highways Code, secs. 6400, et seq. (West 1969)) nor the bond itself guaranteed that the land would be free

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6. As the decision below notes, none of these alleged contractual interests are clearly stated in the complaint. (Pet. App. A-9.)

from restrictive zoning. (See *Northwestern Nat. Life Ins. Co. v. Tahoe Regional Planning Agency, supra,* at pp. 106-107.)[7]

CTRPA's subdivision restriction is an exercise of the state's police power to protect the ecologically fragile Lake Tahoe region from the harmful effects of uncontrolled urbanization and population growth. *(Call v. Feher, supra.)* Such a governmental purpose long has been recognized as legitimate. *(Agins v. City of Tiburon, supra,* 447 U.S. at p. 261.) The future exercise of this power could not have been contracted away, by either CTRPA or by Placer County, even assuming the existence of some sort of promise to allow subdivision. *(Stone v. Mississippi* (1880) 101 U.S. 814, 817; *Call v. Feher, supra.)* The Contract Clause does not require a state to adhere to a contract that surrenders this essential attribute of its sovereignty. *(United States Trust Co. v. New Jersey* (1976) 431 U.S. 1, 23.) Unlike the situation presented in *United States Trust Co. v. New Jersey,* the present case, even if petitioners' assertions are believed, does not involve a purely financial promise not compromising the state's reserved powers. (See 431 U.S. at p. 25.)

Petitioners have failed to allege an impairment which falls within the prohibition of the Contract Clause. There is no controversy under Article I, Section 10 for this Court to review.

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7. Petitioners admitted that they had no express or implied understanding with Placer County about future subdivision of land in their brief to the state appellate court in *Call v. Feher:* "There is no evidence showing that governmental zoning restrictions were not foreseeable . . . [t]here is no evidence respondents Calls purchased the bond assuming the land would be subdivided."

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

CALIFORNIA TAHOE REGIONAL PLANNING AGENCY LAND USE ORDINANCE

(Adopted September 19, 1975)

CHAPTER 7. USE DISTRICTS

Section 7.11 Use Districts

Regulations indicating the allowable land uses and densities in each district are hereby established as set forth in sections 7:15-7.25. The permitted uses shall include accessory uses consistent with such permitted uses. The permitted uses are stated as illustrative of the types of uses consistent with the Regional Plan. The listings are not intended to be exclusive except as otherwise indicated and for the density limitations set forth and for the exclusion of commercial uses from other than commercial districts. An intent of the Ordinance is to encourage local governments to adopt plans and ordinances which are adapted to local needs and desires within the framework of uses established by this Ordinance.

Section 7.15 General Forest District

(a) Specific Purposes:

(1) To preserve outdoor recreational opportunities.

(2) To permit the growing and harvesting of timber, agricultural activities, and extraction of resources.

(b) Permitted Uses:

None but the following uses, or those which are found by the Agency to be appropriate and similar in nature, shall be permitted:

(1) Residential: None, except one single family house may be constructed on any legal lot or parcel of record existing as of February 10, 1972, provided however, that this section shall not apply to lots in residential subdivisions where the final map of such subdivision was approved and filed for record more than five (5) years prior to February 10, 1972 and there has been no construction of roads, sewers, or other substantial facilities serving the subdivision, or the posting of performance bonds assuring such construction, prior to February 10, 1972.

(2) Tourist Residential: None

(3) Outdoor Recreation:

a) Hiking trails and undeveloped campgrounds;

b) Developed campgrounds;

c) Riding trails, pack stations, corrals, stables, and accessory facilities;

d) Organized recreation camps;

e) Skiing facilities.

(d) In no event will the filling, grading or construction requiring the filling or grading of wet lands, stream environment zones, flood plains or any area that would have to be filled in order to ensure protection from floods be permitted unless the project is included in the adopted Regional Transportation Plan. Construction on already filled wet lands or flood plains, other than of a single family house on a lot existing in a residential subdivision as of February 10, 1972, shall not be permitted.

(5) Public and Quasi-Public:

a) Roads and water crossing structures;

b) Radio, television and telephone relay stations and transmission lines and structures;

c) Overhead and underground utilities;

d) Historic sites;

e) Fire protection facilities;

f) Water storage tanks and reservoirs;

g) Sewage lift stations; and

h) Electrical substations.

(6) Commercial: None.

Section 7.16 Recreation District

(a) Specific Purposes:

(1) To assure adequate public opportunity for outdoor recreation, including skiing facilities, boating, day use areas, and access to public and quasi-public beaches.

(b) Permitted uses:

None but the following uses, or those which are found by the Agency to be appropriate and similar in nature shall be permitted.

(1) Residential: None, except one single family house may be constructed on any legal lot or parcel of record existing as of February 10, 1972, provided, however, that this section shall not apply to lots in residential subdivisions where the final map of such subdivision was approved and filed for record more than five (5) years prior to February 10, 1972 and there has been no construction of roads, sewers, or other substantial facilities serving the subdivision, or the posting of performance bonds assuring such construction, prior to February 10, 1972.

(2) Tourist Residential: None

(3) Outdoor Recreation:

a) All those permitted in the General Forest district;

b) Day Use Areas; and

c) Outdoor Recreation Concessions.

(4) Resource Management and Agriculture:

a) Forest Management Programs.

(5) Public and Quasi-Public:

a) All those permitted in the General Forest district;

b) Educational Facilities, Avocational.

(6) Commercial: None

Section 7.17 Rural Estates District

(a) Specific Purposes:

To provide for very low density residential uses primarily in those areas within the region which have been developed in such a manner, private recreation uses and tree farms.

(b) Permitted Uses:

None but the following uses, or those which are found by the Agency to be appropriate and similar in nature, shall be permitted.

(1) Residential:

a) One single family house may be constructed on any lawfully created lot or parcel of record existing as of September 19, 1975.

b) If the subdivision restriction in sections 5.13, 7.14(a) and 8.15 is terminated by amendment of this Ordinance, single family dwelling units

up to one (1) dwelling unit per acre; and

c) Accessory guest house and private stables—with either a or b.

(2) Tourist Residential: None

(3) Outdoor Recreation:

a) Private recreation areas; and

b) Hiking and riding trails.

(4) Resource Management and Agriculture:

a) Forest management programs;

b) Tree farms; and

c) Regulated grazing of animals in undeveloped areas.

(5) Public and Quasi-Public:

a) All those permitted in General Forest District except microwave relay stations;
and

b) Communications equipment buildings.

(6) Commercial: None

Section 7.18 Low Density Residential District (LDR)

(a) Specific Purposes:

(1) To preserve outdoor recreational opportunities for all income groups;

(2) To permit the growing and harvesting of trees, agricultural activities, and extraction of resources;
and

(3) To permit each property owner the option of residental use of his property.

(b) Permitted Uses:

None but the following uses, or those which are found by the Agency to be appropriate and similar in nature, shall be permitted:

(1) Residential:

a) One single family house may be constructed on any lawfully created existing lot or parcel of record existing as of September 19, 1975; and

b) If the subdivision restriction in sections 5.13, 7.13a and 8.15 is terminated by amendment of this Ordinance, single family dwelling units up to one dwelling unit per acre.

(2) Tourist Residential: None

(3) Outdoor Recreation:

a) All those permitted in the Rural Estates district;

b) Day use areas;

c) Developed and undeveloped campgrounds;

d) Pack stations, corrals, stables and accessory facilities in undeveloped areas;

e) Organized recreation camps; and

f) Skiing facilities.

(4) Resource Management and Agriculture:

a) Forest management programs;

b) Tree farms; and

c) Regulated grazing of animals in undeveloped areas.

(5) Public and Quasi-Public:

a) All those permitted in the General Forest District except microwave relay stations;

b) Communications equipment building;

c) Religious facilities;

d) Education facilities, general;

e) Water treatment plant.

(6) Commercial:

a) Home occupations.

Section 7.19 Medium Density Residential

(a) Specific Purposes:

(1) To provide for residential uses consistent with the existing character of areas within the region and environmental protion.

(b) Permitted Uses: None but the following uses, or those which are found by the Agency to be appropriate and similar in nature, shall be permitted:

(1) Residential:

a) One single family house may be constructed on any lawfully created lot or parcel of record existing as of September 19, 1975;
and

b) If the subdivision restriction in sections 5.13, 7.14(a) and 8.15 is terminated by amendment of this Ordinance, single family dwelling units up to 4 dwelling units per acre.

c) Facilities designed and occupied in accordance with local, regional, state or federal programs for the assis-

tance of persons of low or moderate income in need of adequate housing, or housing units which are guaranteed to be available for rental or sale at a cost affordable by persons at or below the median income assuming up to 25% of income is available for housing costs. The densities shall be determined on the basis of the individual project, but shall not exceed eight (8) units per acre.

(2) Tourist Residential: None

(3) Outdoor Recreation:

a) All those permitted in the Low Density Residential District.

(4) Resource Management and Agriculture:

a) Forest management programs; and

b) Tree farms.

(5) Public and Quasi-Public:

a) All those permitted in the Low Density Residential District;

b) Child care nurseries;

c) Police protection facilities; and

d) Medical facilities.

(6) Commercial:

a) All those permitted in the Low Density Residential District.

Section 7.20 High Density Residential District

(a) Purposes:

(1) To provide for residential uses open to low as well as other income groups consistent with the existing character of

areas within the region and environmental protection.

(b) Permitted Uses: None but the following uses, or those which are found by the Agency to be appropriate and similar in nature, shall be permitted:

(1) Residential:

a) One single family house may be constructed on any lawfully created lot or parcel of record existing as of September 19, 1975;

b) If the subdivision restriction in sections 5.13, 7.14(a) and 8.15 is terminated by amendment of this Ordinance, single family dwelling units up to eight (8) dwelling units per acre;

c) Multiperson dwellings not to exceed facilities for 40 persons per acre;

d) Mobile home parks for permanent residences up to eight (8) mobile homes per acre; and

e) Facilities designed and occupied in accordance with local, regional, state or federal programs for the assistance of persons of low or moderate income in need of adequate housing, or housing units which are guaranteed to be available for rental or sale at a cost affordable by persons at or below the median income assuming up to 25% of income is available for housing costs. The densities shall be determined on the basis of the individual project but shall not exceed fifteen (15) units per acre.

(2) Tourist Residential: None

(3) Outdoor Recreation:

a) Private recreation areas;

b) Hiking and riding trails; and

c) Day use areas.

(4) Resource Management and Agriculture:

a) Forest management programs.

(5) Public and Quasi-Public:

a) All those permitted in the Medium Density Residential District; and

b) Cultural facilities.

(6) Commercial:

a) All those permitted in the Medium Density Residential District; and

b) Professional offices.

Section 7.21 Tourist Commercial District

(a) Specific Purposes

(1) To provide adequate space for motels, hotels and related facilities to house and provide services for tourist visitors including those of low income to the region in appropriate locations and consistent with environmental constraints.

(b) Permitted Uses: None but the following uses, or those which are found by the Agency to be appropriate and similar in nature, shall be permitted:

(1) Residential:

a) One single family house may be constructed on any lawfully created lot or parcel of record existing as of September 19, 1975;

b) If the subdivision restriction in sections 5.13, 7.14(a) and 8.15 is terminated by amendment of this Ordinance, single family dwelling units up to eight (8) dwelling units per acre;

c) Multiperson dwellings not to exceed facilities for 40 persons per acre;

d) Mobile home parks for permanent residences up to eight (8) mobile homes per acre; and

e) Facilities designed and occupied in accordance with local, regional, state or federal programs for the assistance of persons of low or moderate income in need of adequate housing, or housing units which are guaranteed to be available for rental or sale at a cost affordable by persons at or below the median income assuming up to 25% of income is available for housing costs. The densities shall be determined on the basis of the individual project but shall not exceed fifteen (15) units per acre.

(2) Tourist Residential:

a) Transient dwelling units up to 20 units per acre provided that up to ten percent of such dwelling units may include kitchen facilities.

b) Recreation vehicle parks up to 8 recreational vehicles per acre.

(3) Outdoor Recreation:

a) All those permitted in the High Density District;

b) Skiing facilities; and

c) Outdoor amusement facilities.

(4) Resource Management and Agriculture:

a) Forest management programs.

(5) Public and Quasi-Public:

a) All those permitted in the High Density Residential District; and

b) Transportation facilities.

(6) Commercial and Industrial

a) All those permitted in the High Density Residential District;

b) Indoor amusement facilities; and

c) Limited commercial.

Section 7.22—General Commercial District

(a) Specific Purposes:

(1) To assure adequate areas in appropriate locations for commercial services necessary within the Region.

(b) Permitted Uses: None but the following uses, or those which are found by the Agency to be appropriate and similar in nature, shall be permitted:

(1) Residential: None except that accessory to the permitted use.

(2) Tourist Residential:

a) All those permitted in the Tourist Commercial District.

(3) Outdoor Recreation:

a) All those permitted in the Tourist Commercial District.

(4) Resource Management and Agriculture:

a) Forest management programs.

(5) Public and Quasi-Public:

a) All those permitted in the Tourist Commercial District;

b) Educational facilities, vocational;

c) Post Office facilities;

d) Incarceration facilities; and

e) Solid waste transfer stations.

(6) Commercial and Industrial:

a) All those permitted in the Tourist Commercial District:

b) Commercial;

c) Light industrial;

d) Batch plants;

e) Bulk storage;

f) Electric power plant; and

g) Wrecking yards.

Section 7.23 Public Service District

(a) Specific Purposes:

(1) To provide a district that enables the coordinated placement of public facilities.

(b) Permitted Uses:

(1) Residential: None, except those directly related to permitted Educational Facilities.

(2) Tourist Residential. None.

(3) Outdoor Recreation: None, except those directly related to permitted Educational Facilities.

(4) Resource Management and Agriculture:

a) Forest management programs.

(5) Public and Quasi-Public:

a) All those permitted in the General Commercial District; and

b) Airports.

(6) Commercial and Industrial: None

Section 7.24 Conservation Reserve District

(a) Specific Purposes

(1) To identify those lands susceptible to future development pursuant to the preparation of specific plans indicating the impacts on the region of the proposed land use, population density, transportation, flood control, forest and wildlife conservation, water quality control, environmental protection, community design, recreation, schools, and other necessary facilities.

(b) Permitted Uses:

(1) All those permitted in the General Forest District;

(2) Uses not of a greater intensity of use than that authorized in the Low Density Residential District, as of the date the use is permitted. Such use shall not be permitted unless and until the applicant has obtained a TRPA General Plan amendment authorizing the proposed use. If the use is subsequently permitted by the Agency, it must be conditioned upon TRPA approval of the specific plan of development and permit.

Section 7.25 Medium Tourist Residential

(a) Specific Purposes

To provide for tourist residential uses consistent with the existing character of areas within the region and environmental protection.

(b) Permitted Uses: None but the following uses, or those which are found by the Agency to be appropriate and similar in nature, shall be permitted:

(1) Residential:

a) One single family house may be constructed on any lawfully created lot or parcel of record existing as of September 19, 1975;

b) Multiperson dwellings not to exceed facilities for 25 persons per acre;

c) Mobile home parks for permanent residences up to six (6) mobile homes per acre; and

d) If the subdivision restriction in section 5.13, 7.14(a) and 8.15 is terminated by amendment of this Ordinance, single family dwelling units up to eight (8) dwelling units per acre.

(2) Tourist Residential:

a) Transient dwelling units up to 20 units per acre provided that one unit contained in development, to be used as a permanent residential unit, may contain kitchen facilities; and

b) Transient dwelling units with kitchen facilities up to fifteen (15) units per acre.

(3) Outdoor Recreation:

a) All those permitted in the High Density Residential District; and

b) Outdoor amusement facilities.

(4) Resource Management and Agriculture:

a) Forest management programs.

(5) Public and Quasi-Public:

a) All those permitted in the High Density Residential District; and

b) Transportation facilities.

(6) Commercial and Industrial:

a) All those permitted in the High Density Residential District; and

b) Indoor amusement facilities.